

# CRIMINALISING ADOLESCENCE: MISUSE OF POCSO IN CONSENSUAL TEENAGE RELATIONSHIPS AND ITS IMPACT ON CHILD RIGHTS

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## **Abstract**

*The Protection of Children from Sexual Offences Act (POCSO), 2012, has been adopted in an attempt to safeguard children from sexual abuse. The Protection of Children from Sexual Offences Act (POCSO), 2012, has been adopted in order to protect children against sexual abuse. Nonetheless, its wholesale application to consensual adolescent relationships has produced side effects. Increasingly, parents are using POCSO in lawsuits against teenage couples, especially in cases of inter caste or interracial elopement and are using POCSO as a social control mechanism. This brings in a critical clash of protection versus criminalisation, tension in strict liability on POCSO and teenage autonomy of health policies, as in the Adolescent Reproductive and Sexual Health (ARSH) programme. This research aims to examine whether the existing understood POCSO framework is in line with the child rights jurisprudence, specifically the standards of emerging capacities and best interests in the UN Convention on the Rights of the Child. Based on the doctrinal analysis and judicial trends, the paper explores the issue of courts struggling with consensual adolescent intimacy in the context of strict statutory requirements. The most remarkable conclusion is that blanket criminalisation is detrimental to children rather than protective as it undermines dignity, autonomy, and developmental rights and promotes trauma via abuse of child protection legislation.*

*Key words:* POCSO Act, ARSH framework, romeo-juliet clause

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## **Childhood, Consent and the Law**

Adolescence is a phase of transition, which is marked with exploration of identity, intimacy, and autonomy. It is not absolute childhood, yet Indian law treats all sexual behaviour under 18 as criminal. The POSCO Act, as a strict liability statute, criminalises all sexual activity involving persons below 18, regardless of consent. The POSCO Act, 2012, designed as a strict liability statute, enforces zero tolerance by raising the age of consent to 18. This is in line with the goal of child protection however, its consequences have not been intended. More often, parents are prosecuting POSCO cases involving teenage partners especially those resulting in elopement, inter-faith, or inter-caste relationships as a way of controlling the decisions of daughters and family honour. The overall question that this trend brings up is whether criminalisation of consensual teenage intimacy is in the best interests of the child. This is not the question of the watering down of protection against abuse, but the question of not abusing child protection laws to police adolescent sexuality. The issue of balancing developmental science with extreme legal requirements is a challenge in a society that is negotiating between the traditional and modernity. This paper attempts to initiate a nuanced discussion, arguing that the law should distinguish between consensual adolescent relationships and cases of exploitation. The following paper preconditions a subtle discourse and suggests that the rights of adolescents should be preserved without mixing the consensual intimacy with exploitation.

## **POCSO and Adolescent Sexuality**

POCSO Act, 2012, came to provide a broad definition to sexual assault on children and increase the age of consent to 18 years. According to this paradigm, consent is of no legal use and any sexual act of a minor is criminalized even in marriage. This is a punitive orientation in strict liability that fails to distinguish consensual exploration and sexual violence. In comparison, health policies like the Adolescent Reproductive and Sexual Health (ARSH) framework acknowledge adolescent sexuality, which encourages safe sex, birth control and education. This brings about a contradiction on its part: the health policy encourages the youth sexual behaviour whereas criminal law reprimands it. Conventionally, laws concerning marriage were related to the age of consent in which the patriarchy had a right over young girls in India. The next course was the reforms of 2012-2013 that brought teenage sexuality to the topic of family honour discourse and parental control. The result will be the clash of the right to health, dignity, and development and enforcement of punishment. Mandatory reporting policies also

exacerbate this tension since they restrict access to reproductive healthcare due to their fear of criminalisation in case they obtain medical help. Through this, the law system is a battle of safety and domination, which undermines the rights of teenagers, by baffling consensual intimacy and sexual violence.

This causes a conflict within itself: the youth sexual behaviour is supported by the health policy but is punished by criminal law. Traditionally in India, marriage laws were connected to age of consent giving authority to patriarchy over young girls. This course was followed by the 2012-2013 reforms which placed teenage sexuality in family honour discourse and parental control. The outcome will be a conflict between the right to health, dignity, and development and punishment enforcement. This tension is also worsened by mandatory reporting policies which limit access to reproductive healthcare because teenagers are afraid of criminalisation in case they seek medical assistance. In this way, the law system is a conflict of protection and control, which weakens the rights of adolescents by confusing consensual intimacy and sexual violence.

### **Court Acknowledging the Grey Area**

There is a sign of uneasiness in judicial practice about wholesale criminalisation under POCSO. The Supreme Court has called upon Parliament to review the age of consent as there has been abuse of the law in consensual cases, High Courts often quash the FIR or grant bail in cases where adolescent girls reject victimhood, social realities, and the misuse of law by parents to manage relationships. In the Covid-19 pandemic, courts had to deal with adolescent abortion cases on the interlacing platforms of POCSO and the Medical Termination of Pregnancy (MTP) Act. One bench took a more liberal stance and permitted abortion beyond the statutory terms so as to safeguard the health of the teenagers, though others would not deem relief, which was a difficult doctrine of adhering to the letter of the law. Criminal cases explained that the consensual relationships were re-considered as rape that compelled them to insist on reports and prosecution of adolescent couples by the criminal justice system. But there were acts of judicial indulgence. Justice D.Y. Chandrachud made it clear that according to the MTP Act, the medical staff is not obliged to reveal the identity of minors requesting an abortion, which safeguards confidentiality. Meanwhile, the Madras High Court in the case of Sabari v. To avoid the criminalisation of consensual adolescent relationships, Inspector of Police recommended thinking about the age of consent or close-in-age exemptions. Justice D.Y. Chandrachud indicated that medical practitioners do not have the duty of disclosing identity of

minors according to the MTP Act despite the Madras High court in *Sabari v. IP*. IP suggested doing so, the lowering of age of consent or exemptions of a close age.

Judicial practice reveals growing discomfort with blanket criminalisation under POSCO. The Supreme Court has urged Parliament to reconsider the age of consent, noting misuse of the law in consensual cases, High Courts frequently quash FIRs or grant bail in cases where adolescent girls deny victimhood, recognising social realities and the misuse of law by parents to control relationships. During the Covid-19 pandemic, courts grappled with adolescent abortion petitions under overlapping frameworks of POSCO and the Medical Termination of Pregnancy (MTP) Act. Some benches assumed a more progressive position, allowing abortion outside the statutory provisions to protect the health of the adolescents, whereas others refused to offer relief, which was a hard rule of following the text of the statute. Criminal cases illustrated that consensual relationships were re-evaluated as rape, which forced them to insist on reporting and prosecution of adolescent couples by the criminal justice system. However, there were acts of judicial compassion. Justice D.Y. Chandrachud clarified that under the MTP Act, medical professionals are not required to disclose the identity of minors seeking abortion, thereby protecting confidentiality. At the same time, the Madras High Court in *Sabari v. Inspector of Police* suggested reconsidering the age of consent or introducing close-in-age exemptions to prevent criminalisation of consensual adolescent relationships. Justice D.Y. Chandrachud made it clear that medical professionals are not obliged to reveal the identities of minors as per the MTP Act even though the Madras High Court in *Sabari v. IP* proposed reducing the age of consent or exemptions of close age of age. These examples show that the judicial system is conscious of the gray zone between security and personal freedom. Nevertheless, relief is discretionary, as a factor of judicial sensitivity and not systematic change. The misuse is recognized by the courts, and the rigidities in the statutes have a restraining effect on the protection of the rights of adolescents by the courts.

### **Victim Turned Accused**

POCSO criminalisation has a negative direct impact on adolescents. Boys are arrested, detained and stigmatized and girls, who are described as victims, tend to resist prosecution, pointing out their autonomy being violated. This is often followed by educational disturbance, school dropout and social shunning. Empirical studies in Gujarat indicate that in 410 cases of sexual assault, 119 cases involved victims aged 16-18 years, 85.7% of them reported to be engaged

in consensual activity. Interestingly, not one of the cases was initiated by the adolescents themselves as they were all initiated by parents or guardians. This family reporting system highlights the role of family and social pressures in leading to criminalisation despite the absence of perceived harm to the so-called victim. The accused, almost always a peer, faces arrest and stigma, while the girl is denied agency and subjected to forensic and judicial processes she may not wish to pursue. Both partners suffer disruption of education, social ostracism, and long-term psychological harm. The law is often used by families to manipulate the decisions made by adolescents and turn consensual relationships into criminal acts. The law undermines the right of the child to dignity, rehabilitation and reintegration by putting consensual teenaged sexuality in the realm of criminal assault. Instead of protecting the adolescents, the justice system, which is supposed to shield them, becomes anti-social and subjects them to trauma.

### **Best Interest Vs. Moral Policing**

A majority of international child rights jurisprudence, especially the UN Convention on the Rights of the Child (UNCRC) focuses on the emerging capabilities and the welfare of the child. Children are known to be rights-holders who have a right to protection, identity, participation and dignity. However, POCSO is mostly used to control morality and not protection, particularly against girls in inter-faith or inter-caste unions. The Indian laws pay excessive attention to the safety against abuse and health, whereas participation and autonomy are neglected. The imbalance is a continuation of a bigger tendency: in his/her family, children are not taken as independent, but as dependent. The impact of punitive legal responses on the rights of adolescents is explained by such practices as the mandatory reporting clauses and the denial of confidential healthcare. The absence of the links between the morality of policing and right-based child protection is disgusting. Instead of giving adolescents a chance to be more autonomous, the law inculcates silence and control, which helps to advance patriarchal norms. Caused by the interpretation of child rights, the best interest principle would have to be fully observed by acknowledging that adolescents are developing beings, able to make informed decisions. The modern-day practice, however, undercuts protection privileges to prohibition, which degrades dignity and growth.

### **Towards a Balanced Legal Approach**

Reform must balance protection and autonomy by bringing about realistic and focused measures. There would be a close-in-age exemption (Romeo-Juliet clause)

to ensure that consensual peer relationships are not criminalised but still guard against exploitation of children by adults. Obligatory child-welfare evaluations before prosecution would permit the use of multidisciplinary screening of the cases (including child-protection officers, psychologists, and health professionals) to discriminate between exploitation and consensual intimacy. Instead of instant FIRs and criminal trials, counselling-first interventions and diversionary measures would lower the level of trauma and assist in rehabilitation.

There is a need to have clear judicial guidelines that would harmonize POSCO with the MTP Act and ARSH policy so that it would provide confidentiality to adolescents who seek healthcare and standard criteria on quashing or initiating prosecutions. Transdisciplinary approach: incorporating law, health, education and child welfare would help develop child friendly channels through which the changing capacities are not ignored but they are also provided protection against abuse. Such changes would bring domestic legislation into accordance with the UNCRC principles and provide an opportunity to diminish the field of moral policing without undermining the protection of really vulnerable children.

### **Conclusion**

The inclusion of POSCO in combating children sexual abuse is necessary, though, the severity of the act in the case of consensual relations among adolescents will discredit child rights and developmental interests. Blanket criminalisation destroys dignity, autonomy, and access to health and it often creates two-fold evils that make adolescents both victims and suspects. The relief is most commonly arbitrary and haphazard because the problem has been pointed out and empathy has been demonstrated by courts. Policy and legislative change to allow close-in-age exemptions, compulsory welfare evaluations, counselling-based reactions, and standardised court parameters can maintain the safety whilst considering the changing abilities of adolescents. Child protection legislations should not attempt to prevent the growth of children, but the harm of children. Relief is usually arbitrary and haphazard as the problem has been indicated and empathy has been shown by courts. Legislative and policy reform introducing closeinage exemptions, mandatory welfare assessments, counsellingbased responses, and harmonised judicial guidelines can preserve protection while respecting adolescents' evolving capacities. Child protection laws must protect children from harm, not from growing up.

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